

**REMARKS**

Claims 1, 4, 6, 8, 10, and 12-13 are all the claims pending in the application. Claim 1 has been amended to incorporate the subject matter of claim 2, which has been canceled. In addition, claims 4 and 6 have been amended to depend from claim 2 and claims 3, 5, 7, 9 and 11 have been canceled.

Entry of the above amendments is respectfully requested.

**I. Response to Rejection of Claims 1-13 under 35 U.S.C. § 102(b)**

Claims 1-13 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Seto et al. (5,560,888).

The rejection is respectfully traversed.

Amended claim 1 is directed to an incubator for accommodating and holding, at a predetermined constant temperature, a dry analysis element spotted with a sample, the incubator comprising: an upper block and a lower block for sandwiching therebetween the dry analysis element, wherein both of the upper and lower block are movable toward and away from each other, wherein a heater is provided only for the lower block and the temperature of the heater is adjusted, wherein the upper block and the lower block are brought into contact with each other, and the upper block is preheated by heat transferred from the lower block before introducing the dry analysis element therebetween, and wherein the dry analysis element is accommodated between the upper block and the lower block, the dry analysis element is sandwiched between the upper block and the lower block and heated by heat from both of the upper block and the lower block.

In the present invention, the upper block is heated (preheated) by heat transferred from the lower block that has a heat source while the upper block and the lower block are placed in close contact with each other. After the upper block is preheated, the dry analysis

element is heated by being sandwiched between the upper block and the lower block.

Seto relates to a biochemical analysis apparatus and incubator for the same. The Examiner directs Applicants' attention to Figures 4, 5 and 13, and asserts that the device includes a film retainer 61, a lower disk 45, a heater 48, which contacts both blocks, and a cover 46 with insulating materials 51 and 52 having a recess opening 59. In addition, the Examiner asserts that the upper block and lower block are brought into contact to hold and incubate an analysis slide.

Claim 1 recites that "both of the upper and lower blocks are movable toward and away from each other". Seto discloses that a film retainer 61 is "urged downward under the force of a spring provided on the upper surface of the retainer", but does not disclose that the lower disk 45 is moveable. *See* col. 8, lines 20-22. That is, although film retainer 61 is moveable toward and away from the lower disk 45, Seto does not disclose that lower disk 45 is moveable toward and away from film retainer 61. Thus, Seto does not disclose anticipate claim 1 since it does not disclose that both the film retainer 61 and the lower disk 45 are moveable toward and away from each other.

In addition, each of claims 4, 6, 8, 10 and 12- 13 depend, directly or indirectly, from claim 1, and it is respectfully submitted that these claims are patentable for at least the same reasons as claim 1.

In view of the above, withdrawal of the rejection is respectfully requested.

**II. Response to Rejection of claims 1-4, 6, 8 and 13 under 35 U.S.C. § 102(b)**

Claims 1-4, 6, 8 and 13 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Arai et al. (5,496,518).

The rejection is respectfully traversed.

Arai relates to an incubator and the Examiner directs Applicants' attention to Figures 4

and 5. Arai discloses that the film pressing member 61 is slidable relative to the incubator cell member 64. specifically, Arai discloses that the film pressing member 61 is compressed between a spring retainer 61d provided on the shank portion 61c and the cell cover 46. See *e.g.*, col. 7, lines 17-22. However, Arai does not disclose that the incubator base 45 is moveable toward film pressing member 61. Thus, Arai does not disclose anticipate claim 1 since it does not disclose that both the film pressing member 61 and the incubator base 45 are moveable toward and away from each other.

In addition, each of claims 4, 6, 8, and 13 depend, directly or indirectly, from claim 1, and it is respectfully submitted that these claims are patentable for at least the same reasons as claim 1.

In view of the above, withdrawal of the rejection is respectfully requested.

**III. Response to Rejection of Claims 1-4 and 13 under 35 U.S.C. § 102(b)**

Claims 1-4 and 13 are rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Sugaya (4,814,279).

The rejection is respectfully traversed.

Sugaya relates to an incubator for chemical-analytical slide and discloses a sealing member 13, which is moveable towards and away from a lower block. A slide 1 can be sandwiched between the sealing member 13 and the lower block. Although the sealing member 13 is moveable toward and away from the lower block, Sugaya does not disclose that the lower block is moveable toward and away from the sealing member 13. Thus, Sugaya does not disclose that both the sealing member and the lower block are moveable toward and away from each other, as recited in claim 1.

In addition, although the Examiner presumes that the heater element is present in one of the blocks as disclosed in column 2, line 11, Sugaya discloses that a heater is embedded in

the upper part of the body 9. The body 9 does not correspond to the upper or lower block of claim 1 because a film 1 cannot be sandwiched between the body 9 and sealing member 13. Thus, Sugaya does not disclose a heater provided only for the lower block, as recited in claim 1.

For at least the above reasons, Sugaya does not anticipate claim 1.

In addition, claims 4 and 13 depend directly from claim 1, and thus, it is respectfully submitted that these claims are patentable for at least the same reasons as claim 1.

In view of the above, withdrawal of the rejection is respectfully requested.

**IV. Response to Rejection of Claim 1 under 35 U.S.C. § 102(b)**

Claims 1 is rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Handique (6,692,700).

The rejection is respectfully traversed.

The Examiner cites Handique as teaching a microfluidic device comprised of first and second blocks that are brought into contact and a heater provided in the lower block.

However, Handique does not relate to an incubator but to a microfluidic device. In addition, in the device of Handique, the blocks are not movable toward and away from the other, particularly since the first and second blocks are a single integrated unit. Furthermore, since fluid samples and reagents are brought into the device, a dry analysis element would not be used.

For at least the above reasons, it is respectfully submitted that Handique does not anticipate claim 1.

In view of the above, withdrawal of the rejection is respectfully requested.

**V. Conclusion**

For the foregoing reasons, reconsideration and allowance of claims 1, 4, 6, 8, 10 and 12-13 is respectfully requested.

If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

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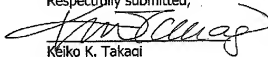
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Respectfully submitted,



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